

Part F

Courts and Civil Proceedings

Judges and Court Administration

Judicial Compensation

In 1980, the General Assembly created the Judicial Compensation Commission. The commission is required to review judicial salaries and pensions every two years and make recommendations to the Governor and General Assembly at least every four years. Joint resolutions to alter judicial compensation are introduced in a year in which there is a recommendation from the commission. The General Assembly may amend a joint resolution to decrease, but not increase, any of the commission's salary recommendations. However, the General Assembly may not reduce a judge's salary below its current level. Failure to adopt or amend the joint resolution within 50 calendar days after its introduction results in adoption of the salaries recommended by the commission.

Senate Joint Resolution 5/House Joint Resolution 5 (both passed), as introduced, reflected the recommendation of the Judicial Compensation Commission to increase judicial salaries 5 percent above current levels. However, the General Assembly amended the resolutions to maintain judicial salaries at their current levels.

Court Personnel Compensation

Circuit Court Clerks

Senate Bill 14 (passed)/House Bill 39 (Ch. 27) repeal minimum salary requirements for circuit court clerks and increase the maximum salary from \$75,000 to \$85,000.

Registers of Wills

Senate Bill 13/House Bill 190 (both passed) repeal minimum salary requirements for registers of wills and increase the maximum salary from \$75,000 to \$85,000.

District Court Bailiffs

House Bill 1382 (passed) requires the Administrative Office of the Courts to review the compensation of District Court bailiffs and report to the General Assembly by December 15, 2002, on its findings and recommendations.

Circuit Court Clerks' Offices

Rental of Space for Circuit Court Clerks

Language in the 1999 *Joint Chairmen's Report* required the Chief Judge of the Court of Appeals to submit a plan for increasing the State's role in circuit court funding. Accordingly, the Judiciary submitted the "Circuit Courts Action Plan" in November 1999. That document set forth an incremental partial cost assumption plan that would, by fiscal 2004, require the State to contribute an additional \$50 million per year to the circuit courts. The General Assembly provided for State assumption of the costs of masters and for an increase in the juror per diem contribution in 2000 and for State funding of law clerks in 2001, three initiatives included in the Judiciary's plan.

Another recommendation contained in the plan was that the State, in fiscal 2002 through 2004, phase in assumption of leasing and security costs for the circuit courts. *Senate Bill 197 (passed)*, which takes effect July 1, 2003, requires the State, to the extent provided in the State budget, to pay counties rent for space occupied in county facilities by the circuit court clerks at a rate per net useable square foot: (1) not to exceed \$2.50 for fiscal 2004; (2) not to exceed \$5 for fiscal 2005; and (3) of \$10 for fiscal 2006 and thereafter. The bill mandates that no more than \$250,000 in State general funds may be used to carry out these provisions in fiscal 2004, and no more than \$500,000 in State general funds may be expended in fiscal 2005. Each county and Baltimore City must: (1) use the savings resulting from the bill solely to increase local expenditures for the circuit courts or related public safety purposes; and (2) in fiscal 2004 through 2011, report annually to the Department of Budget and Management on the expenditures made from the savings.

Recordable Instruments

Senate Bill 199/House Bill 114 (both passed) repeal the requirement that each circuit court clerk record, index, and maintain: (1) an auditor's report of distribution of proceeds of a sale of real or personal property if ratified by the court; and (2) all bonds

of every nature and kind given in any proceeding in the court. *Senate Bill 108 (passed)* repeals the requirement that the clerks of the circuit courts receive, index, and file plats showing property or rights-of-way acquired or conveyed by the State Highway Administration or the State Roads Commission. The bill directs the plats to be filed with and electronically recorded by the Maryland State Archives and authorizes that agency to charge a reasonable fee to recover costs.

Senate Bill 511/House Bill 906 (both failed) would have increased funding for the Circuit Court Real Property Records Improvement Fund by raising the maximum surcharge from \$5 to \$10 for each type of recordable instrument to be recorded among the land records and financing statement records. The bills also would have repealed an associated sunset provision that terminates the fund and the surcharge requirements on June 30, 2006.

Court of Special Appeals

Current law requires the Court of Special Appeals to hold its sessions in Annapolis. In order to afford more convenient access to law students and the public, *House Bill 1165 (Ch. 92)* authorizes the Court of Special Appeals to hold sessions at the University of Maryland at Baltimore and the University of Baltimore, as designated by the Chief Judge of the Court of Special Appeals in conjunction with the deans of the schools of law at the University of Maryland and University of Baltimore.

Clients' Security Trust Fund – Renaming

The Clients' Security Trust Fund was established in 1965 to reimburse clients for losses (not recoverable from other sources) caused by an attorney's or fiduciary's misuse of the client's money. The fund is administered by nine trustees, eight of whom must be attorneys, and one of whom may not be an attorney. With limited exceptions, all attorneys admitted to the Bar of Maryland must pay an annual fee to the fund. The fund may raise and collect additional money through voluntary contributions or other means.

Senate Bill 200 (passed)/House Bill 115 (Ch. 33) rename the Clients' Security Trust Fund of the Bar of Maryland as the Client Protection Fund of the Bar of Maryland, in an effort to better reflect the fund's purpose.

Civil Actions and Procedures

Attorney's Liens

House Bill 1381 (passed) provides that an attorney's lien attaches to any settlement that a client receives as a result of legal services that the client's attorney performs if the client owes the attorney a fee or other compensation for those services. Under current law, an attorney has a lien on a judgment or award received as a result of the attorney's services.

District Court Jurisdiction

Small Claim Actions

In a small claim action, court forms are used to file pleadings, and the rules of procedure and evidence are relaxed to make it easier for parties to represent themselves without hiring an attorney. An officer or employee of a corporation or other business entity may appear on behalf of the entity in a small claim action.

House Bill 70 (passed) increases the maximum amount of a small claim, over which the District Court of Maryland has exclusive jurisdiction, from \$2,500 to \$5,000. The bill also increases, from \$2,500 to \$5,000, the amount in controversy: (1) above which the District Court and circuit courts have concurrent jurisdiction in civil cases; and (2) for which a civil appeal from the District Court must be based on the record.

Dishonored Checks

House Bill 48 (passed) provides that the District Court of Maryland has civil jurisdiction in an action for damages for a dishonored check or other negotiable instrument even if the amount in controversy exceeds \$25,000, the usual monetary limit of the District Court's jurisdiction. Under the bill, if the amount in controversy in such an action exceeds \$25,000, the defendant may transfer the case to a circuit court.

Consumer Protection Codes

House Bill 325 (passed) adds petitions filed by a county or municipality for enforcement of consumer protection codes, for which equitable relief is provided, to the types of cases over which the District Court has exclusive original civil jurisdiction.

Family Law

Domestic Violence

Senate Bill 501/House Bill 663 (both passed) expand the authority of District Court commissioners to include the issuance of interim peace orders and interim domestic violence orders. Interim orders remain in effect until the earlier of a temporary order hearing before a judge or the end of the second business day the office of the District Court clerk is open. The bills allow the filing of a petition for peace order relief with a District Court commissioner if the office of the District Court clerk is not open for business. A petition for relief from domestic violence may be filed with a District Court commissioner if neither the office of the District Court clerk nor the office of the clerk of the circuit court is open for business.

A commissioner is authorized to issue an interim peace order if the commissioner finds that there are reasonable grounds to believe that the respondent has committed and is likely to commit in the future: (1) an act that causes serious bodily harm; (2) an act that places the petitioner in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment; (7) stalking; (8) trespass; or (9) malicious destruction of property.

A commissioner may issue an interim protective order if there are reasonable grounds to believe that the respondent has committed any of the following acts of abuse against a person eligible for relief: (1) an act that causes serious bodily harm; (2) an act that places a person eligible for relief in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense or attempted rape or sexual offense; or (5) false imprisonment.

Senate Bill 501/House Bill 663 make the statutory changes necessary to implement *House Bill 6 (passed)*, which proposes a constitutional amendment granting District Court commissioners the authority to issue civil interim peace orders and civil interim protective orders within the jurisdiction of the District Court when the office of the clerk of the District Court is closed. This power may be exercised only as prescribed by law or rule. The proposed constitutional amendment will be submitted to the voters of the State in the 2002 general election. *Senate Bill 501/House Bill 663* are contingent on the ratification of *House Bill 6* by the voters of Maryland.

Currently, peace orders and domestic violence protective orders may only be issued by a judge; however, most domestic violence occurs when the courts are closed. District Court commissioners are available at all times, but they only have the authority to issue arrest warrants and set terms for pretrial release.

By expanding their authority to include the issuance of interim peace orders and protective orders, these bills afford victims of domestic violence access to protection 24 hours a day, seven days a week.

Child Abuse and Neglect

Safe Havens

Prompted by well-publicized cases involving the disposal of newborns in trash dumpsters and other unsafe locations, the General Assembly considered proposals to prevent future incidents of unsafe abandonment of newborns by providing parents with a safe and anonymous alternative. *Senate Bill 3/House Bill 602 (both passed)* provide immunity from criminal prosecution and civil liability for a person who leaves an unharmed newborn with a responsible adult within three days after the birth of the newborn. If the person leaving the newborn is not the mother of the newborn, the person must have approval from the mother to do so. The person with whom a newborn is left must take the newborn to a hospital or other facility designated by the Secretary of Human Resources as soon as reasonably possible.

The hospital or other designated facility is required to notify the local department of social services within 24 hours after accepting the newborn. The responsible adult, hospital, or other designated facility, and the employees and agents of the hospital or designated facility are immune from civil or criminal liability for good faith actions taken related to the acceptance of or medical treatment and care of a newborn unless damage or injury to the newborn was caused by willful or wanton misconduct or gross negligence.

Central Registry

Senate Bill 863/House Bill 1328 (both passed) prohibit the computerized database of child abuse and neglect investigations maintained by the Department of Human Resources (DHR) from including information from the case files of a local department of social services until any individual found responsible by the local department for indicated or unsubstantiated child abuse or neglect has: (1) been found guilty of any criminal charge arising from the alleged abuse or neglect; (2) unsuccessfully appealed the finding; or (3) failed to exercise the right to appeal within the time frame specified under current law. DHR is in the process of automating all child welfare records, and this legislation will help the department continue to compile and maintain records related to confidential investigations.

Child Support

Privatization Pilot Program

Since 1995, Maryland has reformed child support enforcement by experimenting with different approaches to increasing child support collections. Employing private vendors and comparing results to traditional State-run and innovative State-run approaches has been part of the framework for deciding on the best approach to maximize child support enforcement and collections. Chapter 491, Acts of 1995 and Chapter 486, Acts of 1999 authorized DHR to hire a private contractor to improve child support collections in Baltimore City and Queen Anne's County. DHR was also authorized to establish State-run "demonstration sites" that would employ innovative practices such as streamlined hiring procedures and the payment of incentives to employees to increase collections. These demonstration sites established in Calvert, Howard, Montgomery, and Washington counties were designed to compete with the two privatized sites.

House Bill 495 (passed) is a continuation of the General Assembly's efforts to improve child support enforcement through competition between demonstration sites and the privatized sites. The bill extends the privatization of child support enforcement in Baltimore City and Queen Anne's County. The contract with the current private vendor ends on October 1, 2002. The first privatization contract to be negotiated between DHR and a private contractor after the expiration of the current contract must be three years, with an option of two one-year extensions. Demonstration sites will be established on a phased-in basis. A total of seven demonstration sites must be established by November 1, 2002, including the four existing demonstration sites. A total of 11 demonstration sites must be established by July 1, 2003, and a total of 16 demonstration sites must be established by July 1, 2004. The Secretary has authority to establish demonstration sites at an accelerated pace if there are sufficient funds in the State budget. *House Bill 495* has a termination date of June 30, 2005.

Garnishment of Accounts

In an effort to streamline child support enforcement and improve program effectiveness, the federal government has pushed states away from judicial processes toward administrative processes. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires state child support agencies to perform certain program functions without judicial involvement. In addition, new federally mandated time frames and performance standards necessitate that states move toward more expedited case processing. Failure to comply could cause the State to lose a portion of federal funding for the Child Support Enforcement Program.

House Bill 683 (passed) requires financial institutions, upon notice from the Child Support Enforcement Administration (CSEA), to seize funds in certain accounts subject to garnishment for child support arrears. An obligor must be \$500 or more in arrears of a child support obligation and must have not paid child support for more than 60 days before CSEA may institute an action to attach and seize the amount of the arrearage. CSEA must apply the amount seized to the obligor's child support arrears. If the obligor has more than one child support case with arrears, CSEA must allocate the amount among the cases. An obligor may challenge CSEA's actions by filing a request for investigation or a motion with the circuit court.

Child Support Guidelines

On or before January 1, 1993, and at least every four years after that date, CSEA is required to review Maryland's child support guidelines to ensure that application of the guidelines results in the determination of appropriate child support award amounts and to report its findings and recommendations to the General Assembly. **House Bill 284 (failed)** would have revised the schedule of basic child support obligations used to calculate the amount of a child support award under the guidelines, reflecting CSEA's most recent recommendations for changes in the child support guidelines. The bill also would have adjusted the lower end of the guidelines to increase the self-support reserve to reflect the current federal poverty level and would have extended the combined adjusted actual income covered by the guidelines from \$10,000 to \$20,000.

Continuation of Support Through High School

Several bills were introduced this year with the intent to ensure that a child who turns 18 while still in secondary school continues to receive financial support until graduation. **Senate Bill 657/House Bill 993 (both passed)** alter the definition of "minor" to provide that a person who is 18 and enrolled in secondary school has the right to receive support and maintenance from both parents until the person dies, marries, is emancipated, graduates from or is no longer enrolled in secondary school, or turns 19, whichever occurs first. **Senate Bill 654/ House Bill 963 (both failed)** would have taken a somewhat different approach to continuing child support. For support orders filed after October 1, 2002, the bills would have required child support to continue for a child over the age of 18 who was a full-time student in secondary school and residing with the custodial parent, until graduation, death, marriage, emancipation, or until the child reaches 19 years, whichever occurs first. For support orders filed before October 1, 2002, the bills would have authorized a court to order continued support payments for a child over 18 who is enrolled as a full-time student in secondary school and resides with the custodial parent.

Children in Need of Assistance

Drug-exposed Infants

Chapters 367 and 368 of 1997 (SB 512/HB 1209), established a pilot program to identify and treat pregnant and postpartum women who require drug treatment. The pilot program began in October 1997 in seven jurisdictions: Baltimore City and Dorchester, Prince George's, Somerset, Washington, Wicomico, and Worcester counties. The program is now operating in an eighth jurisdiction, Howard County. *Senate Bill 495/House Bill 1142 (both passed)* modify current law to improve the program's effectiveness by providing that within one year after a child's birth, there is a presumption that the child is not receiving proper care and attention for purposes of determining whether the child is a child in need of assistance (CINA), if the child was born exposed to cocaine, heroin, or their derivatives and the mother either refuses the recommended level of drug treatment or does not successfully complete the recommended level of drug treatment. The evidence of exposure may be provided through any appropriate tests of the mother or child or, on admission to the hospital for delivery, a positive toxicology test of the mother for cocaine, heroin, or its derivatives.

Child in Need of Assistance Proceedings

In 2001, the General Assembly passed legislation (Chapter 415, Acts of 2001) proposed by the Foster Care Court Improvement Project (FCCIP) of the Maryland Judicial Conference to revise and reorganize the laws governing juvenile court proceedings. The act separated the laws pertaining to child in need of assistance (CINA) proceedings from those pertaining to delinquency and child in need of supervision (CINS) proceedings and made a number of substantive changes to the CINA provisions.

Following enactment of that legislation, FCCIP received feedback from judges, masters, and attorneys involved in CINA cases regarding provisions that needed clarification. Several bills were proposed by FCCIP in response to those suggestions.

House Bill 968 (passed) provides that unless a court finds good cause, a CINA case must be terminated after the court grants custody and guardianship of a child to a relative or other individual. If the court finds good cause not to terminate the case, the court is required to conduct a review hearing every 12 months until the case is terminated. *Senate Bill 394/House Bill 970 (both passed)* make a number of technical and clarifying changes in the laws governing CINA proceedings in juvenile court.

Adoption

House Bill 396 (passed) requires the Department of Health and Mental Hygiene, upon request, to prepare and register a birth certificate for a person born and adopted in a foreign country who received an IR-3 visa from the United States Immigration and Naturalization Service and whose adopting parent is a Maryland resident. The bill also establishes that a final decree of adoption granted by a judicial, administrative, or executive body of a jurisdiction or country other than the United States will be given full recognition and effect in Maryland if the adopting parent is a Maryland resident and the child has received an IR-3 visa. The bill will allow Maryland residents who adopt a child in a foreign country to obtain a birth certificate without having to readopt the child in Maryland.

Marriage

Marriage Ceremonies

Sitting and retired judges are authorized to perform marriage ceremonies starting June 1, 2002, under ***Senate Bill 404/House Bill 106 (both passed)***. Before passage of these bills, a marriage ceremony could be performed in the State only by an official of a religious order or body authorized to perform a marriage ceremony, a clerk of a circuit court, or a deputy clerk of a circuit court designated by the county administrative judge. Maryland was one of only four states (North Carolina, South Carolina, and Massachusetts are the other three) that did not permit judges to perform marriage ceremonies.

Unlawful Marriages

House Bill 1393 (passed) modifies penalties for an unlawful marriage to one's grandmother or grandfather, father or mother, son or daughter, brother or sister, or grandson or granddaughter. The bill removes banishment from the State as a penalty for an unlawful marriage.

Human Relations

Following the enactment of legislation in 2001 to prohibit discrimination based on sexual orientation, there was little activity in the human relations area during the 2002 session.

Employment Discrimination

Senate Bill 479/House Bill 808 (both failed) would have altered procedures regarding hearings on complaints of discrimination filed with the Human Relations Commission, and would have expanded the relief available for unlawful employment practices to include compensatory damages.

Housing Discrimination

Senate Bill 484/House Bill 990 (both failed) would have prohibited discriminatory practices in the sale or rental of residential housing because of a person's source of income.

Real Property

Time Shares

Many Maryland time-share instruments provide that the time shares automatically terminate on a specified date, after which all owners of a unit become tenants in common.

House Bill 385 (Ch. 62) authorizes a time-share owners association, by a two-thirds majority vote of the members present at a meeting, to amend its time-share instrument to provide that the time shares in the time-share project will not terminate at the end of the time-share plan. The notice of a meeting at which such an action is to be considered must expressly state that the action may be considered at the meeting.

Sales of Real Property – Anne Arundel County

House Bill 352 (Ch. 60) requires a contract for the sale of single-family residential real property in Anne Arundel County to contain a notice stating that the buyer should consult the appropriate county agency or county Internet web site for information concerning the current and future land use plans, facility plans, public works plans, school plans, or other plans affecting the property or area.

Ground Rents and Mortgage Releases

Several bills that would have addressed the recovery of the costs of court actions and expenses necessary to collect past due ground rent and the duty of a holder of a loan secured by a mortgage or deed of trust that has been paid in full to release the mortgage or deed of trust failed.

Ground Rents

Senate Bill 225/House Bill 176 (both failed) and *House Bill 975 (failed)* would have affected the entitlement of a landlord or holder of ground rent to collect costs and expenses relating to the recovery of past due ground rent. *Senate Bill 225* and *House Bill 176* would have limited the recovery of costs to the lesser of the amount of actual expenses relating to the demand for back rent or \$400. *House Bill 975* would have categorized the allowable expenses available to the holder of a ground rent and included the expenses of: (1) complying with notice requirements, including reasonable attorney's fees not to exceed \$200; and (2) filing an ejectment action, including reasonable attorney's fees not to exceed \$400, and fees for a title search and examination not to exceed \$200.

Releases

House Bill 1404 (failed) would have required that within 45 days after a loan secured by a mortgage or deed of trust on the borrower's principal dwelling has been paid in full: (1) a release of the mortgage or deed of trust must be executed and recorded by the holder; or (2) the release must be sent in a recordable form to the borrower with a notice disclosing where to record it and the estimated cost of recordation. If the holder of the mortgage or deed of trust failed to release the mortgage or deed of trust or send the release in a recordable form, the borrower, after making a demand for the release, would have been authorized to bring an action to require delivery of the release. Finally, if the borrower prevailed in the action, the bills would have entitled the borrower to recover costs and expenses in connection with bringing the action, including reasonable attorney's fees. Current law requires the holder to release a mortgage or deed of trust or send the release to the borrower within a reasonable time after the loan has been paid in full but provides no enforcement mechanism if the holder fails to do so.

Estates and Trusts

Uniform Principal and Income Act

In the 2000 session, the General Assembly passed Chapter 292, which enacted the revised Uniform Principal and Income Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1997 (UPIA 1997). The act established default rules for the trustee of a trust or the personal representative of a decedent's estate to follow in determining whether receipts and disbursements should be classified as principal or income when the governing will or trust instrument is silent. However, consideration of a major provision of UPIA 1997, Section 104, which would have allowed a trustee to adjust principal and income to the extent made necessary by prudent investment rules when a trust provides for a fixed income for the income beneficiary was deferred.

Senate Bill 641/House Bill 881 (both passed) enact a modified version of Section 104 that allows a trustee to convert a trust to a “unitrust” or make an adjustment between principal and income if a written request is received from a beneficiary. The bills also vary from the uniform act by: (1) requiring a trustee to give notice of a proposed decision to convert or adjust; (2) requiring consent of all the beneficiaries or court approval of a proposed decision; and (3) protecting a trustee from liability for actions taken in accordance with the bills.

The bills define a “unitrust” as a trust from which the income beneficiary is entitled to receive annually a fixed percentage of the fair market value of the assets, and establish 4 percent as the fixed percentage for a unitrust.

In addition, *Senate Bill 641/House Bill 881* address a problem that arises when subchapter “S” corporation stock is owned by a trust that qualifies as a “qualified subchapter S trust” (QSST) and the S corporation engages in a partial or complete liquidation. The proceeds of the liquidation are paid to the trustee as a trust receipt. Under normal principal and income rules, receipts from the liquidation are allocated to principal, but under the QSST election, any ordinary income or capital gain generated by the liquidation flows through to the income beneficiary, who must pay the income taxes. These bills make it clear that in this situation the trustee must reimburse the income beneficiary for income taxes paid by the income beneficiary on the corporate distributions that are allocated to trust principal and not distributed to the income beneficiary.

Estates of Victims of Terrorist Attacks

Senate Bill 67/House Bill 1178 (both passed) require the registers of wills to waive the inheritance taxes and probate fees for the estates of Maryland citizens who lost their lives in the September 11 terrorist attacks. These are emergency bills that apply retroactively to the estates of decedents who died as a result of wounds or injury from the terrorist attacks against the United States on September 11, 2001. In January, the President signed the Victims of Terrorism Tax Relief Act of 2001, which contains a provision that reduces the federal estate tax liability of estates of victims of the September 11 attacks.

